

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

MICHAEL ELIX,)	
)	
Plaintiff,)	
)	
vs.)	No. CIV-08-809-C
)	
OKLAHOMA CITY POLICE)	
DEPARTMENT,)	
)	
Defendant,)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff filed this action pursuant to 42 U.S.C. § 1983, alleging Defendant violated his constitutional rights. Consistent with the provisions of 28 U.S.C. § 636(b)(1)(B), this matter was referred to United States Magistrate Judge Valerie K. Couch. Judge Couch entered a Report and Recommendations (“R&R”) on August 25, 2008, finding Plaintiff had failed to name a Defendant who has the capacity to be sued and recommending dismissal without prejudice. Plaintiff has timely objected to the R&R.

In his Objection, Plaintiff identifies the officer who allegedly caused his harm and asks the Court to substitute that person as the Defendant in the case. As Judge Couch noted in her R&R, the Court cannot “assume the role of advocate for the pro se litigant.” Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). To do as Plaintiff asks would place the Court in the position of amending the parties in the case and clarifying to the officer that he was in fact the person sued rather than the entity named by Plaintiff. Further, pursuant to

Fed. R. Civ. P. 4(a)(1), the summons is to be directed to the “defendant;” here, that entity cannot be sued. Therefore, a summons could not be properly issued without the Court acting on behalf of Plaintiff, which cannot be done. In short, if any amendment is to be made to the Complaint, it must be done by Plaintiff, by filing an Amended Complaint.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge (Dkt. No. 10), and for the reasons announced therein, DISMISSES the Second Amended Complaint without prejudice. Plaintiff may file an Amended Complaint naming the proper Defendant within 30 days of the date of this Order.

IT IS SO ORDERED this 10th day of September, 2008.



ROBIN J. CAUTHRON
United States District Judge